of relocation to comparable facilities.

Our existing rules provide that during the voluntary negotiation period parties are encouraged but not required to negotiate the terms of relocation. Following the expiration of this fixed period, emerging technology licensees may initiate a one-year period for mandatory negotiations, during which time the parties are required to negotiate in good faith. After the expiration of the mandatory negotiation period, involuntary relocation may be sought by the emerging technology licensee, provided such licensee pays all the costs of relocating the incumbent to comparable facilities.

We adopted this relocation process after receiving extensive input by all interested parties and from a number of members of Congress. The framework was designed to balance carefully the needs of new emerging technology licensees for early access to the spectrum with those of the microwave incumbents for a smooth and seamless transition to new facilities in higher spectrum bands. We concluded that a process that relied primarily on voluntary negotiations, would provide the best balance between the ensuring orderly and fair relocation of incumbent microwave facilities and the national interest in facilitating the development of new technologies and services.

Although I strongly support the measures we have taken today to clarify our rules and to provide incentives for early relocation, I have concerns about the questions raised in the *Further Notice* relating to whether we should shorten the voluntary negotiation period for the C, D, E and F PCS spectrum blocks. In the *Further Notice* we seek comment on whether we should shorten the voluntary negotiation period by one year, and lengthen the mandatory negotiation period by one year, for PCS licensees in the D, E and F blocks. We also ask whether the Commission should adjust the negotiation periods for the C block. I question whether the public interest would be served by adjusting these negotiation periods and altering the expectations of the parties at this time. Because auctions for the D, E, and F block have not commenced and relocation negotiations are not underway, changes to these relocation rules may be less disruptive. However, unlike the D, E, and F blocks, the C block auction is underway and is in its final stage. C block applicants had advance notice of the relocation rules and have presumably taken them into account in their bidding. In addition, incumbents located on the C block have relied on the existing relocation rules.

In considering whether to shorten the period for voluntary negotiations for the C, D, E and F blocks, we should be mindful of the fact that the 2 GHz fixed microwave bands support communications of incumbent police, fire and emergency medical licensees, as well as public utilities and others that provide essential services to the public. It is critical that these licensees be able to rely on established rules and that the relocation process not cause disruption or harm to their communications services.

I am confident that in most cases in which relocation is necessary, voluntary negotiations will continue to be successful and will result in the least disruptive means for accommodating new emerging technology services in this spectrum. Cost sharing will also encourage system-wide relocation that will minimize disruption to incumbent microwave facilities, while more rapidly facilitating the deployment of PCS. Nevertheless, while adjusting the negotiation periods may facilitate more rapid deployment of PCS by further

expediting the relocation process, parties should comment upon how any changes to the voluntary and mandatory negotiation periods will affect incumbents' operations. Our relocation rules must provide adequate time for incumbent licensees to prepare for relocation and must continue to prevent the disruption of existing 2 GHz services.

# Separate Statement
# of
# Commissioner James H. Quello

*Re: Amendment of the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation,* WTB Docket No. 95 - 157; RM - 8643

This *Report and Order and Further Notice of Proposed Rule Making* clarifies some aspects of the relocation rules applicable when emerging technologies displace incumbent licensees. In the instant matter, the microwave relocation rules continue to be the most controversial part of our PCS regulatory scheme. Although the majority of the negotiations are proceeding as intended, in several instances the negotiation process has broken down. These disputes appear to be more than "hard ball" negotiations; they appear to be instances of "gaming" some unintended ambiguities in the rules. We, therefore, adopt some "fine-tuning" of this Commission's relocation rules to clarify this Commission's intent.

First and foremost, we adopt a cost sharing plan that will facilitate the relocation of the microwave incumbents and the roll-out of PCS, with detriment to neither. I do not want this significant achievement to get lost in the minutiae of wrangling over legal terms of art in this contentious proceeding. Indeed, the proposal for a cost sharing mechanism was the basis for opening this rule making. The focus should be on achieving the overarching goal of the relocation rules, *viz.*, to provide comparable facilities to the incumbents that are paid for by the new entrants. This process must be based on verifiable data for actual costs of demonstrably comparable facilities. The microwave incumbents are to be made whole. They were to be no worse off after the relocation than before. That is, their communications system should have the same (i.e., "comparable") performance criteria. These amendments reiterate that this Commission will not tolerate instances of over-reaching by permitting demands for more than comparable facilities.

I noted at the NPRM stage that the virtue of the relocation procedures -- their inherent flexibility -- can also be the source of some difficulties. That is always the situation when the Commission correctly decides to rely on negotiations between the parties rather than heavy-handed governmental intrusion into what should be private contractual matters. This Commission wisely built in this give-and-take to accommodate the needs of both the displaced incumbents and the new entrants. While I believe that some fine-tuning is in order, I want to reiterate my support for the relocation procedures and urge the parties to negotiate forthrightly.

I find it somewhat surprising that we would need to explicitly require our licensees, whether they are incumbents or new entrants, to negotiate in good faith. I believe that good faith behavior is required at all times. Some negotiations, however, have floundered significantly. These instances, although a minority, nevertheless threaten the rapid and rational deployment of PCS. Therefore, in addition to more explicitly defining such terms as "comparable facilities" my colleagues also wish to define what constitutes "good faith". I myself believe that this definition will at best be proven superfluous once the other elements of the *Further Notice* are in place. These will assist the parties in achieving a fair result that fulfills our goal to facilitate emerging technologies by refocusing the negotiation on the fundamental issue of determining the actual costs of relocating the interfering microwave links.